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18 Attorney for Defendant
19 MOSSWORLD ENTERPRISES, INC.

20
21 IN THE UNITED STATES DISTRICT COURT
22
23 FOR THE NORTHERN DISTRICT OF CALIFORNIA
24
25 OAKLAND DIVISION

26 San Francisco Technology Inc.,
27
28 Plaintiff,

29 vs.

30 Mossworld Enterprises, Inc.
31
32 Defendant.

Case No. 4:10-cv-10-05574 SBA

**JOINT STIPULATION TO ALLOW
DEFENDANT TO FILE AN AMENDED
ANSWER TO COMPLAINT AND
~~PROPOSED~~ ORDER**

[LOCAL RULE 7-12]

1 SAN FRANCISCO TECHNOLOGY, INC. ("Plaintiff") by and through their undersigned
2 counsel of record, and subject to Court approval, hereby stipulate that the Defendant MOSSWORLD
3 ENTERPRISES, INC. may file a First Amended Answer to Plaintiff's Complaint in this action, a
4 copy of which is attached hereto. Defendant shall electronically file a copy of the attached First
5 Amended Answer promptly upon receipt of the Court's executed Joint Stipulation and Order.

6 1. On or about December 8, 2010, Plaintiff filed its Complaint against Defendant in the
7 above-captioned matter.

8 2. On or about February 8, 2011, Defendant filed its Answer. Amendment was
9 necessary to assert an affirmative defense in view of a new precedential decision.

10 3. After meeting and conferring, the undersigned counsel stipulated to Defendant filing a
11 First Amended Answer to the Complaint.

12 **SO STIPULATED**

13 Dated: April 14, 2011

14
15 /s/Douglas W. Sprinkle
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25 Dated: April 14, 2011

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2 Dated: April 13, 2011

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9 **PURSUANT TO STIPULATION, IT IS SO ORDERED,**

10
11 Dated: 4/26/11


Hon. Sandra Brown Armstrong
U.S. District Court Judge

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Attorney for Defendant
MOSSWORLD ENTERPRISES, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

San Francisco Technology Inc.,

Plaintiff,

vs.

Mossworld Enterprises, Inc.

Defendant.

Case No. 4:10-cv-05574 SBA

**DEFENDANT MOSSWORLD
ENTERPRISES, INC.'S FIRST AMENDED
ANSWER TO COMPLAINT**

JURY TRIAL DEMANDED

Defendant Mossworld Enterprises, Inc. hereby files this First Amended Answer to the
Complaint pursuant to the recently decided Federal Circuit opinion *In re BP Lubricants*, _____ F.3d
_____, Misc. No. 960, 2011 W.L. 873147 (Fed. Cir. March 15, 2011) (Exhibit A), wherein the court

1 dismissed the *qui tam* plaintiff's false marking claims. This newly decided case is the sole reason for
2 which this First Amended Answer to the Complaint, adding a Sixth Affirmative Defense, is filed.
3 The parties have stipulated to the filing of this First Amended Answer to the Complaint.

4 Defendant Mossworld Enterprises, Inc. hereby answers the Complaint for False Patent
5 Marking of Plaintiff San Francisco Technology, Inc., noting that every allegation therein is denied
6 unless specifically admitted. Defendant would like to point out that the U.S. House of
7 Representatives has proposed legislation that would amend the false marking statute, 35 U.S.C. §
8 292, to limit the class of *qui tam* plaintiffs to those who have suffered a "competitive injury" due to
9 the alleged false marking. The proposed legislation would be retroactive and would apply to all cases
10 pending on or after the date the legislation is enacted. If said legislation passes, the Plaintiff will loose
11 any and all claims against Plaintiff.

12 NATURE OF THE ACTION

13 1. Defendant admits the Complaint purports to allege claims of false marking, but deny
14 Plaintiff is entitled to any relief hereunder.

15 PARTIES

16 2. Defendant has insufficient information to answer this allegation and leaves Plaintiff to
17 its proofs.

18 3. Defendant admits the allegation of Paragraph 2 of the Complaint.

19 JURISDICTION AND VENUE

20 4. Defendant does not dispute that this Court has jurisdiction under 28 U.S.C. §§ 1331
21 and 1338(a) for the purposes of this action.

22 5. Defendant does not dispute venue in this district for purposes of this action.

23 6. Defendant does not dispute that this Court has personal jurisdiction over Defendant
24 solely for purposes of this action. Defendant admits advertising its products on its website,
25 www.snacktrap.com, and selling its products at retail store chains having locations in California and
26 in this District. Defendant denies the remaining allegations in Paragraph 6.
27
28

INTRADISTRICT ASSIGNMENT

7. Defendant does not dispute that that this case is appropriate for District-wide assignment under Civil Local Rule 3-2(c).

MOSSWORLD'S [ALLEGED] FALSE MARKING

8. Defendant incorporates by reference their responses to the foregoing paragraphs as if fully set forth herein.

9. Defendant admits the allegation of Paragraph 9 of the Complaint.

10. Defendant admits the allegation of Paragraph 10 of the Complaint.

11. Defendant admits the allegation of Paragraph 11 of the Complaint.

12. Defendant admits the allegation of Paragraph 12 of the Complaint.

13. Defendant admits the allegation of Paragraph 13 of the Complaint.

14. Paragraph 14 contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 14 of the Complaint.

15. Denied as untrue.

16. Denied as untrue.

17. Defendant admits the allegation of Paragraph 17 of the Complaint.

18. Paragraph 18 contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 18 of the Complaint.

19. Paragraph 19 contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 19 of the Complaint.

20. Paragraph 20 contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 20 of the Complaint.

21. Paragraph 21 contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 21 of the Complaint.

22. Paragraph 22 contains legal conclusions to which no answer is required. To the extent an answer is required, Defendant denies the allegations in Paragraph 22 of the Complaint.

1 23. Paragraph 23 contains legal conclusions to which no answer is required. To the extent
2 an answer is required, Defendant denies the allegations in Paragraph 23 of the Complaint.

3 **DEMAND FOR JUDGMENT**

4 24. Defendant denies that Plaintiff is entitled to an award of any relief at all, including the
5 relief sought in its prayer for relief against Defendant. Defendant has not violated the false marking
6 provisions of 35 U.S.C. § 292 and should not be held liable for any such marking. Therefore,
7 Plaintiff's prayer should be denied in its entirety and with prejudice, and Plaintiff should take
8 nothing. Defendant denies all allegations and statements not expressly admitted or responded to
9 herein and further denies that Plaintiff is entitled to any of the relief requested, or to any relief at all.

10 **DEMAND FOR JURY TRIAL**

11 Defendant demands a trial by jury on all issues so triable.

12 **AFFIRMATIVE DEFENSES**

13 Defendant hereby asserts the following Affirmative Defenses:

14 **FIRST AFFIRMATIVE DEFENSE**

15 Defendant did not act with "with the intent ... of deceiving the public and inducing them to
16 believe that the thing was made, offered for sale, sold, or imported into the United States by or with
17 the consent of the patentee" pursuant to 35 U.S.C. 292(b).

18 **SECOND AFFIRMATIVE DEFENSE**

19 As drafted, 35 U.S.C. 292(b) violates the 'Take Care' and 'Appointments' clauses of Article II
20 of the United States Constitution as it fails to provide for the necessary supervision of the qui tam
21 litigant who is purporting to enforce a criminal statute on behalf of the government.

22 **THIRD AFFIRMATIVE DEFENSE**

23 Defendant's products are not "unpatented article[s]" and thus do not violate the false marking
24 provisions of 35 U.S.C. § 292.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 Neither the Plaintiff nor the United States has suffered an injury as a result of Defendant's
27 conduct alleged in this Complaint.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff San Francisco Technology, Inc. is merely a so-called patent troll, having initiated numerous actions of similar nature against unsuspecting Defendant. Plaintiff has suffered absolutely no harm resulting from Defendant's actions.

SIXTH AFFIRMATIVE DEFENSE

The Complaint fails to set forth a cause of action under F.R. Civ. P 12(b)(6) by failing to meet the fact pleading specificity required by F.R. Civ. P. 9(b); *see In re BP Lubricants*, ____ F.3d ____, Misc. No. 960, 2011 W.L. 873147 (Fed. Cir. March 15, 2011).

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for the following relief:

- A. The Court find Plaintiff's claims against Defendant be dismissed with prejudice and that Plaintiff take nothing by way of its Complaint;
- B. That judgment be rendered in favor of Defendant;
- C. That a declaration be entered that the patent markings on Defendant's products have not violated 35 U.S.C. § 292;
- D. That this case be found to be exceptional under 35 U.S.C. § 285;
- E. That Defendant be awarded its reasonable attorney fees and costs in defending itself against this action; and
- F. That the Court award such other and further relief that it deems just and proper.

DEMAND FOR JURY TRIAL

Defendant Mossworld Enterprises, Inc. hereby demands a trial by jury.

Respectfully submitted,

DATED: April 14, 2011

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DATED: April 14, 2011

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed using the court's electronic filing system ("ECF"). The ECF system serves a "Notice of Electronic Filing" to all parties and counsel who have appeared in this action and who have consented thereunder to accept that Notice as service of this document.

DATED: April 14, 2011

Respectfully submitted,

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